

SENATE BILL No. 87

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-36; IC 35-45-5-12.

Synopsis: Type II gaming. Authorizes pull tabs, punchboards, and tip boards in establishments licensed to sell alcoholic beverages to customers for consumption on the licensed premises. Makes an appropriation.

Effective: July 1, 2008.

Arnold

January 8, 2008, read first time and referred to Committee on Commerce, Public Policy & Interstate Cooperation.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 87

A BILL FOR AN ACT to amend the Indiana Code concerning gaming and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-36 IS ADDED TO THE INDIANA CODE AS A
2 **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2008]:

4 **ARTICLE 36. TYPE II GAMING IN ESTABLISHMENTS**
5 **LICENSED TO SELL ALCOHOLIC BEVERAGES**

6 **Chapter 1. General Provisions**

7 **Sec. 1. Under 15 U.S.C. 1172, approved January 2, 1951, the**
8 **state of Indiana, acting by and through the elected and qualified**
9 **members of the legislature, declares that the state is exempt from**
10 **15 U.S.C. 1172.**

11 **Sec. 2. All shipments of gambling games authorized under this**
12 **article to distributors and retailers in Indiana, the registering,**
13 **recording, and labeling of which have been completed by the**
14 **manufacturer or dealer in accordance with 15 U.S.C. 1171 through**
15 **15 U.S.C. 1178, are legal shipments of gambling devices into the**
16 **state of Indiana.**

17 **Sec. 3. This article does not apply to the following:**



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(1) The Indiana state lottery established under IC 4-30.

(2) Pari-mutuel horse racing under IC 4-31.

(3) Charity gaming under IC 4-32.2.

(4) Riverboat gambling under IC 4-33.

(5) Slot machine wagering under IC 4-35.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Commission" refers to the Indiana gaming commission.

Sec. 3. "Department" refers to the department of state revenue.

Sec. 4. "Distributor" means a person licensed to distribute pull tabs, punchboards, and tip boards under IC 4-32.2.

Sec. 5. "Fund" means the Type II gaming enforcement fund established by IC 4-36-6-1.

Sec. 6. "Licensed premises" has the meaning set forth in IC 7.1-1-3-20.

Sec. 7. "Licensee" means a person holding a license issued under this article.

Sec. 8. "Manufacturer" means a person licensed to manufacture pull tabs, punchboards, and tip boards under IC 4-32.2.

Sec. 9. "Person" means an individual, a sole proprietorship, a partnership, an association, a fiduciary, a corporation, a limited liability company, or any other business entity.

Sec. 10. "Pull tab" means a game conducted in the following manner:

(1) A single folded or banded ticket or a two-ply card with perforated break-open tabs is bought by a player from a retailer.

(2) The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of numbers, letters, or symbols.

(3) In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.

(4) Winners, or potential winners if the game includes the use of a seal, are determined by revealing the faces of the tickets or cards. The player may be required to sign the player's name on numbered lines provided if a seal is used.

(5) The player with a winning pull tab ticket or numbered line receives the prize stated on the flare from the retailer. The prize must be fully and clearly described on the flare.

Sec. 11. "Punchboard" means a card or board that contains a

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grid or section that hides the random opportunity to win a prize based on the results of punching a single section to reveal a symbol or prize amount.

Sec. 12. "Retailer" means a person who is licensed:

- (1) to sell alcoholic beverages under IC 7.1-3 to customers for consumption on the person's licensed premises; and
- (2) to conduct Type II gambling games under a retailer's license issued under IC 4-36-4.

Sec. 13. "Tip board" means a board, a placard, or another device that is marked off in a grid or columns, with each section containing a hidden number, numbers, or other hidden symbols that determine a winner.

Sec. 14. "Type II gambling game" means a pull tab, punchboard, or tip board game.

Sec. 15. "Type II gambling operation" means the conduct of gambling games authorized under this article in a licensed establishment.

Chapter 3. Powers and Duties of the Commission

Sec. 1. (a) The commission shall supervise and administer Type II gambling operations conducted in Indiana under this article.

(b) The commission shall enforce this article.

Sec. 2. For purposes of conducting an investigation or a proceeding under this article, the commission may do the following:

- (1) Administer oaths.
- (2) Take depositions.
- (3) Issue subpoenas.
- (4) Compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

Sec. 3. The commission may adopt rules under IC 4-22-2 for the establishment, implementation, and operation of Type II gambling games and to ensure that the Type II gambling games are consistently operated in a fair and honest manner.

Sec. 4. (a) The commission has the sole authority to issue a license to a person authorizing the person to sell, distribute, or manufacture Type II gambling games under this article.

(b) The commission may not limit the number of persons licensed under this article.

Sec. 5. The commission shall charge the following fees for the issuance or renewal of an annual license:

- (1) Two hundred fifty dollars (\$250) for a retailer's license to conduct a Type II gambling operation in the retailer's licensed

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premises.

(2) One thousand dollars (\$1,000) for a distributor's license.

(3) One thousand five hundred dollars (\$1,500) for a manufacturer's license.

Chapter 4. Licensing

Sec. 1. The commission may issue a retailer's license to an applicant that satisfies the requirements of this article.

Sec. 2. (a) To qualify for a retailer's license, a person must operate an establishment licensed under IC 7.1-3 to sell alcoholic beverages to customers for consumption on the person's licensed premises.

(b) Notwithstanding subsection (a), the following may not apply for a retailer's license under this article:

(1) A person holding a horse track permit under IC 7.1-3-17.7.

(2) A licensed owner of a riverboat licensed under IC 4-33.

(3) An operating agent who operates a riverboat in a historic hotel district under IC 4-33.

(4) A person licensed to conduct slot machine wagering under IC 4-35.

Sec. 3. (a) To obtain a retailer's license, a person must submit an application to the commission on a form prescribed by the commission. The application must include at least the following:

(1) The name and address of the applicant and of any person holding at least a ten percent (10%) interest in the applicant.

(2) The applicant's consent to credit investigations and criminal record searches.

(3) Waivers and releases signed by the applicant that the commission believes are necessary to ensure a full and complete review of the application.

(b) An applicant must furnish all information requested by the commission, including financial data and documents, certifications, consents, waivers, and individual histories.

(c) The commission shall review each application for a retailer's license submitted under this chapter and shall inform each applicant of the commission's decision concerning the issuance of a retailer's license to the applicant.

(d) The costs of investigating an applicant for a retailer's license under this chapter shall be paid from the application fee paid by the applicant.

(e) An applicant for a retailer's license under this chapter must pay all additional costs that:

(1) are associated with the investigation of the applicant; and

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(2) exceed the amount of the application fee paid by the applicant.

Sec. 4. The commission may issue a distributor's license to an applicant who meets the requirements of this article.

Sec. 5. The commission may issue a manufacturer's license to an applicant who meets the requirements of this article.

Sec. 6. (a) To obtain a distributor's license or a manufacturer's license, a person must submit an application to the commission on a form prescribed by the commission. An applicant must furnish all information required by the commission.

(b) To qualify for a distributor's license or a manufacturer's license under this chapter, a person must be a licensed distributor or manufacturer under IC 4-32.2.

Sec. 7. The commission shall conduct or cause to be conducted a background investigation of each applicant for licensure under this chapter.

Sec. 8. Criminal history record information obtained during the investigation of an individual under section 7 of this chapter must be maintained by the commission for the term of the individual's license under this article and for any subsequent license term under this article.

Sec. 9. The commission may require that an application or other document submitted by an applicant or a licensee be sworn to or affirmed before a notary public.

Sec. 10. (a) Except as provided in subsection (b), the commission may not issue a license to an applicant who:

(1) has knowingly made a false statement of material fact to the commission;

(2) is found by the commission to lack the necessary financial stability or responsibility for licensure;

(3) is an individual less than twenty-one (21) years of age on the date on which the application is received by the commission;

(4) is on the most recent tax warrant list;

(5) is an individual and has been convicted of or entered a plea of guilty or nolo contendere to a felony in the ten (10) years preceding the date of the license application, unless the commission determines that:

(A) the individual has been pardoned or the individual's civil rights have been restored;

(B) after the conviction or entry of the plea, the individual has engaged in the kind of law abiding commerce and good

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citizenship that would reflect well upon the integrity of the commission; or

(C) the individual has terminated a relationship with a person whose actions directly contributed to the conviction or entry of the plea;

(6) is an individual and has been convicted of or entered a plea of guilty or nolo contendere to a violation of a gambling statute in any jurisdiction; or

(7) fails to provide all materials requested by the commission.

(b) The commission may determine that a waiver allowing the issuance of a license is warranted under the circumstances for an individual described in subsection (a)(6).

Sec. 11. Credit and security investigation information submitted in connection with an application for a license under this chapter is confidential and may not be disclosed except for official purposes under this article or under a judicial order.

Sec. 12. A license issued under this chapter may not be transferred without prior written approval of the commission.

Sec. 13. If the commission proposes to revoke a license issued under this chapter, the licensee may continue to operate under the license until the commission has made a decision and all administrative appeals have been exhausted by the licensee.

Chapter 5. Type II Gambling Operations

Sec. 1. A retailer may offer the sale of Type II gambling games in accordance with this article.

Sec. 2. A Type II gambling game may be sold under this article only on the retailer's licensed premises.

Sec. 3. A retailer who obtains a Type II gambling game must obtain the Type II gambling game from a distributor or manufacturer licensed by the commission under this article.

Sec. 4. A retailer shall maintain accurate records of all financial aspects of the retailer's Type II gambling operation. A retailer shall make accurate reports of all financial aspects of the retailer's Type II gambling operation to the commission within the time established by the commission. The commission shall prescribe forms for this purpose.

Sec. 5. (a) The total prizes awarded for one (1) Type II gambling game may not exceed two thousand dollars (\$2,000).

(b) A single prize awarded for one (1) winning ticket in a Type II gambling game may not exceed three hundred dollars (\$300).

(c) The selling price for one (1) ticket for a Type II gambling game may not exceed one dollar (\$1).

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1 **Sec. 6. The following persons may not play or participate in any**
 2 **manner in a Type II gambling game:**

3 **(1) An employee of the commission.**

4 **(2) A person less than twenty-one (21) years of age.**

5 **Chapter 6. Type II Gaming Enforcement Fund**

6 **Sec. 1. The Type II gaming enforcement fund is established. The**
 7 **commission shall administer the fund.**

8 **Sec. 2. The fees and civil penalties collected by the commission**
 9 **or the department under this article shall be deposited in the fund.**

10 **Sec. 3. Money in the fund does not revert to the state general**
 11 **fund at the end of a state fiscal year. The treasurer of state shall**
 12 **invest the money in the fund not currently needed to meet the**
 13 **obligations of the fund in the same manner as other public funds**
 14 **may be invested.**

15 **Sec. 4. There is appropriated annually to the commission from**
 16 **the fund an amount sufficient to cover the costs incurred by the**
 17 **commission for the purposes specified in this article.**

18 **Chapter 7. Penalties**

19 **Sec. 1. (a) The commission may suspend or revoke the license of**
 20 **or levy a civil penalty against a licensee for any of the following:**

21 **(1) Violation of a provision of this article or of a rule of the**
 22 **commission.**

23 **(2) Failure to accurately account for Type II gambling games.**

24 **(3) Failure to accurately account for sales proceeds from the**
 25 **licensee's Type II gambling operation.**

26 **(4) Commission of a fraud, deceit, or misrepresentation.**

27 **(5) Conduct prejudicial to public confidence in the**
 28 **commission.**

29 **(b) If a violation is of a continuing nature, the commission may**
 30 **impose a civil penalty on a licensee for each day the violation**
 31 **continues.**

32 **Sec. 2. The commission may impose on a licensee the following**
 33 **civil penalties:**

34 **(1) Not more than one thousand dollars (\$1,000) for the first**
 35 **violation.**

36 **(2) Not more than two thousand five hundred dollars (\$2,500)**
 37 **for the second violation.**

38 **(3) Not more than five thousand dollars (\$5,000) for each**
 39 **additional violation.**

40 **Sec. 3. In addition to imposing the penalties described in section**
 41 **2 of this chapter, the commission may do all or any of the**
 42 **following:**

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(1) Suspend or revoke a license issued under this article.

(2) Lengthen a period of suspension of a license issued under this article.

(3) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day a civil penalty goes unpaid.

Sec. 4. Except as provided in section 5 of this chapter, a person who violates this article commits a Class A infraction.

Sec. 5. A person who knowingly or intentionally:

(1) makes a false statement on an application submitted under this article;

(2) operates a Type II gambling operation in which wagering is conducted or is to be conducted in a manner other than the manner required under this article;

(3) permits a person less than twenty-one (21) years of age to play a Type II gambling game; or

(4) wagers or accepts a wager on a Type II gambling game at a location other than a retailer's licensed premises;

commits a Class A misdemeanor.

Chapter 8. Security

Sec. 1. The commission is responsible for security matters under this article. The commission may, with the approval of the governor, employ individuals who are necessary to carry out this chapter.

Sec. 2. The commission may do any of the following:

(1) Investigate an alleged violation of this article.

(2) Arrest an alleged violator of this article or of a rule adopted by the commission.

(3) Enter the following premises for the performance of the commission's lawful duties:

(A) A retailer's licensed premises.

(B) A place in which Type II gambling games are being purchased, sold, manufactured, printed, or stored.

(4) Take necessary equipment from the premises referred to in subdivision (3) for further investigation.

(5) Obtain full access to all financial records of an alleged violator on request.

(6) If there is a reason to believe that a violation has occurred, search and inspect the premises where the violation is alleged to have occurred or is occurring. A search under this subdivision may not be conducted unless a warrant has first been obtained by the commissioner. A contract entered into

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by the commission may not include a provision allowing for warrantless searches. A warrant may be obtained in the county in which the search will be conducted or in Marion County.

(7) Seize or take possession of:

- (A) papers;
- (B) records;
- (C) tickets;
- (D) currency; or
- (E) other items;

related to an alleged violation.

Sec. 3. The commission shall conduct investigations necessary to ensure the security and integrity of Type II gambling operations under this article. The commission may conduct investigations of the following:

- (1) Retailers.
- (2) Applicants for licenses issued under this article.
- (3) Licensed manufacturers and distributors.
- (4) Employees of the commission under this article.
- (5) Applicants for contracts or employment with the commission under this article.

Chapter 9. State Preemption

Sec. 1. Type II gambling games other than those authorized by the commission under this article are not allowed in Indiana.

Sec. 2. Local taxes, regardless of type, may not be imposed on the operations of the commission under this article or on the sale of Type II gambling games under this article.

Sec. 3. (a) Local governmental authority concerning the following is preempted by the state under this article:

- (1) All matters relating to the conduct of Type II gambling games.
- (2) All matters relating to the possession, transportation, advertising, sale, manufacture, printing, storing, or distribution of Type II gambling games.

(b) A county, a municipality, or another political subdivision of the state may not enact an ordinance relating to the commission's operations authorized by this article.

Sec. 4. A state or local law providing a penalty for or a restriction or prohibition against the conduct of Type II gambling operations or the possession, manufacture, transportation, distribution, advertising, printing, storing, or sale of Type II gambling games does not apply to the conduct of Type II gambling

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1 **operations under this article or to the possession, manufacture,**
2 **transportation, distribution, advertising, printing, storing, or sale**
3 **of Type II gambling games under this article.**

4 SECTION 2. IC 35-45-5-12 IS ADDED TO THE INDIANA CODE
5 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2008]: **Sec. 12. This chapter does not apply to Type II gambling**
7 **games authorized under IC 4-36 in a licensed establishment.**

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